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Jus in Bello Issues Arising in the Hostilities in Iraq in 2003

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The hostilities in Iraq in 2003 brought to the fore a number of *jus in bello* issues deserving special consideration. This paper will deal with ten such issues.

The Status of Unlawful Combatants

The subject of unlawful combatancy has already been addressed by the present writer in the conference on Afghanistan in 2002.² It is not proposed to repeat here what was stated at some length in the earlier essay. Suffice it to state that, under customary international law, a combatant who does not fulfill the cumulative conditions of lawful (or privileged) combatancy—*inter alia*, that of having “a fixed distinctive sign recognizable at a distance”³—becomes an unlawful combatant, i.e., he is denied the privileges of a prisoner of war status and exposed to the full rigor of the domestic penal system for any act of violence perpetrated by him in civilian clothes.

The use of uniforms by members of the regular armed forces is a matter of custom, *esprit de corps* and convenience. Lawful combatancy is not determined by the wearing of a uniform per se. As indicated, it is determined (*inter alia*) by the wearing of a fixed distinctive emblem recognizable at a distance. This fixed distinctive emblem may be less than a full-fledged uniform (e.g., a special headgear or an armband). But if the fixed distinctive emblem of regular armed forces is a uniform,

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then the removal of that uniform in (or in proximity to) combat does divest the person acting that way of lawful combatancy.

The issue of the removal of a uniform (as a fixed distinctive emblem) by members of the regular armed forces must be examined within the confines of space and time. A member of the armed forces who is performing his duties far from the contact zone with the enemy and removes his uniform without any possible intention (or even reasonable ability) to deceive the enemy as to his true combatant status does not thereby lose his entitlement to prisoner of war privileges. Thus, the question whether military personnel stationed in the Pentagon wear uniform or civilian clothes while at work is irrelevant to their status as lawful combatants while hostilities are raging in Iraq. However, any member of the armed forces who removes his uniform during combat—or even en route to combat or in the course of disengagement from it—becomes an unlawful combatant.

The legal position is the same whether the combatants under discussion are Americans or Iraqis. The *jus in bello* applies equally to both sides in an international armed conflict, regardless of who is in the right—and who is in the wrong—in terms of the *jus ad bellum*.⁴ One of the hallmarks of the hostilities in Iraq, in 2003, was that much of the fighting on the Iraqi side was conducted by “fedayeen” who fought Coalition forces out of uniform. These “fedayeen” were unlawful combatants. But so were any members of the US Special Forces (or other Coalition military units) who fought out of uniform.

Removal by a combatant of a fixed distinctive emblem (such as a uniform) affects his entitlement to prisoner of war status. It exposes him either to (i) trial by the domestic courts of the Detaining Power for any act amounting to an ordinary crime under the local legal system—such as murder, arson, etc.—which would be condoned if carried out by lawful combatants in the course of hostilities; or to (ii) detention without benefit of the immense panoply of protection spread over prisoners of war pursuant to Geneva Convention (III). However, removal of the fixed distinctive emblem does not amount to a breach of the *jus in bello* itself, and cannot be deemed a war crime.

Admittedly, Article 37 of Additional Protocol I of 1977 provides:

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:

.....

(c) the feigning of civilian, non-combatant status.⁵

Neither the United States nor Iraq is a Contracting Party to the Protocol which is, therefore, inapplicable in the hostilities between them. But, in any event, the provision of Article 37(1)(c) must be viewed as curious and in some respects misleading. On the face of it, a radical change is brought about in customary international law as regards the status of combatants who feign civilian status by removing their fixed distinctive emblem and wear plain clothing. In conformity with Article 37(1)(c), if the act leads to the killing, injury or capture of an adversary, who is invited to believe that he is facing a civilian, the act is considered perfidious, and it constitutes a direct breach of the *jus in bello* itself.

The wording of Article 37(1)(c), to say the least, is surprising, inasmuch as the Protocol in general—far from imposing more stringent constraints on combatants taking off their fixed distinctive emblem—actually relaxes in a controversial way the standards of customary international law in this context. How can one account for the singular thrust of the new stricture? The answer is that Article 37(1)(c) does not amount to much more than lip-service. Any lingering doubt is dispelled by a rider in Article 44(3) (where much of the controversial relaxation of unlawful combatancy occurs): “Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1(c).”⁶ Even the ICRC Commentary concedes that “[t]here is a certain contradiction in terms” between the provisions of Article 37(1)(c) and Article 44(3).⁷

Since—under customary international law—the removal of a fixed distinctive emblem (such as uniform) by a combatant during military operations is a matter of loss of privileged status, and not a breach of the *jus in bello* (let alone a war crime), it follows that each belligerent party is at liberty to factor in a cost/benefit calculus as to whether or not circumstances militate in favor of retaining the fixed distinctive emblem or removing it. If members of Special Forces units are fighting behind enemy lines, and if the enemy has a demonstrably poor track record in observing the *jus in bello*'s norms concerning the protection of *hors de combat* enemy military personnel, the conclusion may be arrived at that on the whole it is well worth assuming the risks of (potential) loss of prisoner of war status upon capture while benefiting from the (actual) advantages of disguise. However, as a rule and in terms of the armed forces in general (as distinct from high-hazard commando units), the prospect of loss of prisoner of war status is a significant consequence that should, and does, weigh heavily on commanders before they give their assent to an adventurous course of action.

The preservation of traditional modes of combat by uniformed (or otherwise properly identified) soldiers is a matter of great import. The only way to ensure respect for the basic principle of distinction between civilian and combatants, protecting the latter from attack and injury, is to enable each belligerent party to know

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whom it is facing. A combatant disguising himself as a civilian deserves the sanction of loss of prisoner of war status for he endangers all civilians.

Dealing with Suicide Bombers

There is currently a lacuna in the *jus in bello*, insofar as the growing phenomenon of suicide bombers disguised in civilian clothes is concerned.⁸ Clearly, suicide bombers disguised in civilian clothes are unlawful combatants. But what effective sanction is available against them? By its very nature, the sanction of detention or prosecution (under the domestic legal system) is irrelevant. A civilian (or a combatant out of uniform) who merely prepares himself to become a human bomb, but is thwarted in the attempt, can still be subject to detention or prosecution. Once the act is executed, the perpetrator is beyond the reach of the law. The question as to which measures can be taken by way of deterrence against potential suicide bombers is by no means resolved at the present time, especially in light of the generally upheld principle that nobody can be punished for an offense he has not personally committed.⁹ Accomplices and accessories to the terrorist act can evidently be prosecuted or detained, but members of the perpetrator's family—or others associated with him—cannot be held responsible for his conduct solely because of that connection.

A specific question relating to suicide bombers arises in the context of naval warfare. The issue is how to protect hospital ships from immense potential peril of being sunk by suicide bombers operating from speedboats (*à la* the well-known attack against the *USS Cole*), with a view to causing vast numbers of casualties. The problem is derived from the fact that Article 35 of Geneva Convention (II) of 1949, in listing conditions not depriving hospital ships of protection, indicates that arms held on board must be confined to those kept by the crew for the maintenance of order, for their own defense or that of the sick and wounded.¹⁰ This appears to exclude machine guns (and of course heavier armament) which may repel suicide bombers.¹¹ How can hospital ships be safeguarded against the external threat of suicide bombers in the absence of adequate armament on board? Probably, the best solution would be to allow light armed naval craft to patrol the waters around hospital ships. But the matter is not currently addressed by Geneva Convention (II) or by any other instrument.

Feigned Surrender

The above-mentioned Article 37 of Additional Protocol I, in prohibiting the act of killing, injuring or capturing an adversary by resort to perfidy, refers also to: "(a)

the feigning of . . . a surrender.”¹² No doubt, this is a reflection of customary international law. In Iraq, there were many instances in which surrender was feigned perfidiously. It must be appreciated that the killing, injuring or capture of an adversary, and the perfidious resort to feigning of an intent to surrender, need not be committed by the same person or persons. Should combatants hoisting the white flag of surrender be in collusion with their companions (who are lying in wait), perfidy is consummated once the latter open fire upon enemy soldiers stepping forward to take the former as prisoners of war. Still, collusion is the key to such manifestation of perfidy. In many combat situations, some individuals (or even units) surrender while others continue to fight. Absent collusion, the fact that John Doe persists in shooting does not mean that Richard Roe is feigning when raising the white flag. To be on the safe side, the adverse party’s troops need not expose themselves to unnecessary risks, and they may demand that Richard Roe step forward unarmed.¹³

“Human Shields”

Possibly the most characteristic feature of the hostilities in Iraq in 2003 is that the Saddam Hussein regime constantly—and flagrantly—resorted to the tactics of intermingling civilians and combatants, using civilians as “human shields” with a view to protecting combatants and military objectives. The deliberate intermingling of civilians and combatants, designed to create a situation in which any attack against combatants would necessarily entail an excessive number of civilian casualties, is a flagrant breach of the *jus in bello*. Article 51(7) of Protocol I proclaims: “The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations.”¹⁴ The concept lying at the root of the prohibition appears already in Article 28 of Geneva Convention (IV): “The presence of a protected person may not be used to render certain points or areas immune from military operations.”¹⁵ Irrefutably, this norm mirrors customary international law.¹⁶ Utilizing the presence of civilians or other protected persons to render certain points, areas or military forces immune from military operations is recognized as a war crime by Article 8(2)(b)(xxiii) of the 1998 Rome Statute of the International Criminal Court.¹⁷ The reference to other protected persons extends beyond civilians to prisoners of war, military medical personnel, etc.¹⁸

There are three ways in which the shielding of military objectives by civilians can be attempted:

(i) One scenario relates to civilians who voluntarily choose to serve as human shields, with a view to deterring an enemy attack against combatants or military objectives. Such conduct would amount to an active participation in the hostilities on the part of the civilian volunteers, who would consequently become (unlawful) combatants.

(ii) The second scenario comes into play when combatants compel civilians (either enemy civilians or their own) to move out and join them in military operations. The civilians in question may be obliged to serve as a screen to marching combatants, sit on locomotives of military trains in transit, etc. Acting as they do under duress, these civilians do not become combatants. Those who coerce the civilians to act in such a manner assume full criminal responsibility for their conduct.

(iii) The third scenario is a variation of the second. The only difference is that, instead of the civilians being constrained to join the combatants, the combatants (or military objectives) join the civilians. That is done, e.g., by combatants emplacing tanks or artillery pieces in the courtyard of a functioning school or in the middle of a dense civilian residential area. Likewise, military units may infiltrate columns of civilian refugees (as happened during the Korean War), in order to mask a military operation.¹⁹ Once more, the civilians do not become combatants as a result of the military action taken.

All three types of attempts to protect combatants or military objectives with human shields are equally unlawful.

The crucial question is whether the brazen act of shielding a military objective with civilians (albeit a war crime) can effectively tie the hands of the enemy by barring an attack. Article 51(8) of Protocol I states that a violation of the prohibition of shielding military objectives with civilians does not release a belligerent from its legal obligations *vis-à-vis* the civilians.²⁰ What this means is that the principle of proportionality (discussed below) remains relevant. However, even if that is the case, the actual test of excessive injury to civilians must be relaxed. That is to say, the appraisal whether civilian casualties are excessive in relation to the military advantage anticipated must make allowances for the fact that, if an attempt is made to shield military objectives with civilians, civilian casualties will be higher than usual. To quote Louise Doswald-Beck, “[t]he Israeli bombardment of Beirut in June and July of 1982 resulted in high civilian casualties, but not necessarily excessively so given the fact that the military targets were placed amongst the civilian population.”²¹

Customary international law is certainly more stringent than the Protocol on this point. It has traditionally been perceived that, should civilian casualties ensue from an illegal attempt to shield combatants or military objectives, the ultimate responsibility lies with the belligerent State placing innocent civilians at risk.²² A belligerent State is not vested by the *jus in bello* with the power to block an otherwise legitimate attack against combatants (or military objectives) by deliberately placing civilians in harm's way.²³

Abuse of Hospitals, Mosques and Schools

Throughout the hostilities of 2003, the Iraqis consistently used hospitals, mosques and schools as weapon arsenals, staging areas for military operations and launch pads for attacks against Coalition forces. It goes without saying that hospitals, mosques and schools are civilian objects which are entitled to protection—indeed, special protection because of their medical, religious and cultural nature—from attack. However, the *jus in bello* is clear about the requirement to not abuse that protection. When hospitals, mosques and schools are put to military use, their protection is terminated and they become military objectives.²⁴ Article 52 of Protocol I clarifies in Paragraph 2 that any object can turn into a military objective through use (making an effective contribution to military action); the sole qualification is proclaimed in Paragraph 3: “In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”²⁵ It must be borne in mind that the presumption is patently rebuttable, and it arises only in case of doubt. There is no room for doubt once combatants are exposed to direct fire from a supposedly civilian object.²⁶ If a steeple of a church or a minaret of a mosque is used as a sniper's nest, doubt is eliminated and the enemy is entitled to treat it as a military objective.

Even Article 53 of the Protocol, which lends special protection to certain cultural objects and places of worship constituting the cultural or spiritual heritage of peoples, prohibits their use in support of the military effort.²⁷ Article 13 adds that the protection of civilian medical units shall cease if they are used to commit, outside their humanitarian function, acts harmful to the enemy.²⁸

The pivotal issue here is proportionality. That is to say, in the words of Judge Higgins, in her Dissenting Opinion in the ICJ Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*: “even a legitimate target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack.”²⁹ Protocol I does not employ the phrase “disproportionate,” preferring, in Article 51(5)(b), the term “excessive.”³⁰ Thus, it would be excessive to destroy a

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hospital, with many dozens of civilian casualties, in order to eliminate a single enemy sniper.³¹ In contrast, if, instead of a single enemy sniper, a whole artillery battery would operate from within the hospital, such destruction may be warranted.³²

Individual Targeting of Central Figures in the Regime

Pursuant to the *jus in bello*, all combatants can be lawfully targeted.³³ This includes all members of the armed forces (other than medical or religious personnel), whether or not they are actually engaged in combat.³⁴ When a person takes up arms or merely dons a uniform as a member of the armed forces, he automatically exposes himself to enemy attack. The *jus in bello* does not preclude singling out an individual enemy combatant as a target, i.e., “attacks, by regular armed military forces, on specific individuals who are themselves legitimate military targets.”³⁵ Thus, leaders of the Iraqi regime—like Saddam Hussein—who wore military uniforms and prided themselves on holding high-ranking positions in the Iraqi military hierarchy could be targeted by Coalition forces, provided that the latter did not entrust the mission to unlawful combatants, as discussed earlier.

Looting by Enemy Civilians

Pursuant to customary international law, as reflected in the Hague Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention II of 1899 and IV of 1907, pillage of towns and other places is forbidden, either in assault (Article 28)³⁶ or in occupied territories (Article 47).³⁷ Pillage means looting (or plundering) of enemy, public or private, property by individuals for private ends.³⁸ Looting is a common phenomenon in warfare, but it is usually perceived as a problem affecting the belligerent forces (especially in assault or in occupation). The Iraqi situation was somewhat singular in that the collapse of the Saddam Hussein regime brought about prolonged large-scale looting of Iraqi public and private edifices (including, notoriously, the national museums) by the local population going on the rampage. Undeniably, the *jus in bello* prohibition of pillage covers all types of looting by whoever is undertaking it. The obligation of belligerent parties is evident, and it is reflected (*inter alia*) in Article 4(3) of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: “The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, or any acts of vandalism directed against, cultural property.”³⁹ Surely, this covers all types of looting, including that carried out by local inhabitants against their own Government, institutions and co-nationals.

The Status of Journalists

Article 79 of Protocol I enunciates that journalists engaged in dangerous professional missions in areas of armed conflict are to be considered and protected as civilians.⁴⁰ Journalists do not lose their status as civilians by accompanying armed forces⁴¹ (or being “embedded” in them). It does not matter what their specific mission as members of the media is: the expression “journalists” covers photographers, TV cameramen, sound technicians, and so on.⁴²

All the same, it must be understood that when journalists choose to go into the combat zone, with a view to covering hostilities from the front, they are engaged in a dangerous professional mission. Being civilians, journalists must not be attacked deliberately. But one should not be surprised when journalists are accidentally caught in the cross-fire between the belligerent parties (as happened on several occasions in Iraq). It is unrealistic to expect journalists to undertake a dangerous professional mission without casualties.

In any event, journalists must behave as civilians. If they go on their mission under heavily armed guard, and attempt to pull heroic feats (using, if necessary, their escorts), they are liable to lose their protection.

Treatment of Prisoners of War

Judging by media reports, a number of Coalition soldiers captured by Iraqi armed forces may have been executed. If so, this was in direct contravention to the most fundamental rule of Geneva Convention (III) Relative to the Treatment of Prisoners of War, encapsulated in Article 13 (first Paragraph).⁴³ Willful killing of prisoners of war constitutes a “grave breach” of the Convention, as per Article 130,⁴⁴ namely, a war crime.

The Iraqis also interrogated American prisoners of war on television in a manner that many people in the United States found objectionable. Such interrogation may have amounted to a violation of Article 13 (second Paragraph) of the Convention, which mandates the protection of prisoners of war against insults and public curiosity.⁴⁵ However, even assuming that that was the case, it is noteworthy that such an act (unless amounting to torture or inhuman treatment) does not constitute a grave breach of the Convention under Article 130. Moreover, interrogation on television at least attested that the prisoners of war in question were alive in captivity. The appearance on television therefore substantially reduced the chances of the subsequent execution of the prisoners of war. It is a matter of record that all American prisoners of war seen on television were in fact, eventually, found alive.

The Applicability of the Law of Belligerent Occupation

The Coalition was very eager to present its forces in Iraq as an army of liberation. But notwithstanding the fact that the overthrow of the Saddam Hussein regime brought liberation to the Iraqi people, it must be appreciated that—pursuant to international law—the legal status of the Coalition forces in Iraq is not that of liberators but that of belligerent occupants. Belligerent occupation is governed by Articles 42–56 of the Hague Regulations of 1899/1907,⁴⁶ as well as Geneva Convention (IV) of 1949.⁴⁷ It is true that, following the unconditional surrender—and total collapse—of Nazi Germany and Imperial Japan at the close of World War II (in May and August 1945, respectively), the Allied countries did not regard themselves as subject to the application of the Hague Regulations in running the two countries.⁴⁸ However, that was before the adoption of Geneva Convention (IV) in 1949. Article 2 (second Paragraph) of Geneva Convention (IV) makes it clear that the Convention applies to “all cases of partial or total occupation of the territory of a High Contracting Party.”⁴⁹ It is also noteworthy that the Security Council explicitly refers to the Coalition forces in Iraq as “Occupying Powers” in two Chapter VII resolutions adopted unanimously (initiated, in fact, by the United States and the United Kingdom): Resolution 1472 (2003) and, even more significantly, Resolution 1483 (2003). Resolution 1472 refers to the duty of the Occupying Power to ensure the food and medical supplies of the population of Iraq.⁵⁰ Resolution 1483 mentions the responsibilities and obligations under applicable international law of the United States and the United Kingdom as occupying powers; and calls upon all concerned to comply fully with their obligations under international law, including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907.⁵¹

The application of the Hague Regulations and Geneva Convention (IV) to Iraq is liable to raise a number of issues, such as:

(a) The duty, under Article 43 of the Hague Regulations, to “restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”⁵² Article 43 has far-reaching repercussions.⁵³ It should be emphasized that the Occupying Power must ensure, as far as possible, that life in the occupied territory is not paralyzed by armed bands and saboteurs. A state of anarchy, which characterized at least parts of Iraq for a number of weeks following the end of major hostilities, could not be allowed to continue.

(b) While regime change in Iraq—i.e., the overthrow of the dictatorial regime of Saddam Hussein and the Ba’ath Party—was merely a natural

consequence of the Coalition's victory in the Gulf War, American notions of changing the structure of Iraq, for instance, transform it from a unitary State to a federal State, may run into difficulties (unless gaining the freely expressed consent of the local population). Much depends on circumstances. It is noteworthy that, during World War I, Germany was accused of a breach of Article 43 when it tried to change the regional organization of occupied Belgium into two administrative parts (Flemish and Walloon).⁵⁴ On the other hand, when the British divided occupied Libya into two administrative districts (Cyrenaica and Tripolitania) during World War II, there was no complaint.⁵⁵

(c) Pursuant to the Hague Regulations, there are many issues relating to the handling of public and private property in occupied territories. The Regulations are not necessarily draconic for the Occupying Power. Thus, the Coalition forces could have kept the billions of dollars of cash and gold bullions found in caches left behind by the leaders of the Saddam Hussein regime. Article 53 (first Paragraph) of the Regulations expressly allows an army of occupation to take possession of cash, funds etc. which are the property of the State.⁵⁶ The rule is similar to that governing the capture of the enemy's State cash and funds on the battlefield: these constitute booty of war.⁵⁷ In the event, notwithstanding the preceding provisions, the Coalition, owing to its self-perception as a liberator of Iraq, chose to take the altruistic step of preserving the troves found for the benefit of the Iraqi people.

(d) However, in other instances the Hague Regulations may tie the hands of the Coalition. There are questions spawned by the principle that the Occupying Power, under Article 55, can only be regarded as "administrator and usufructuary" of public immovable property.⁵⁸ One such problem affects the drilling of oil, especially in light of a rather controversial legal opinion of the Department of State—offered when Israel developed new oil fields in the Gulf of Suez—but now liable to haunt the Coalition in Iraq.⁵⁹

Having said all that, it should be noted that under Article 6 of Geneva Convention (IV), the application of most—albeit by no means all—of the provisions of the Convention ceases one year after the general close of military operations.⁶⁰ The general close of major combat operations has already been announced, albeit perhaps somewhat prematurely. In any event, it is generally hoped (and expected) that the full application of the Geneva Convention would prove a relatively temporary matter.

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Notes

1. Professor Dinstein is Yancowicz Professor of Human Rights and Pro-President at Tel Aviv University (Israel).
2. See Yoram Dinstein, *Unlawful Combatancy*, 32 ISRAEL YEARBOOK ON HUMAN RIGHTS 247 (2002).
3. Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 4(A)(2)(b), 6 U.S.T. 3316, 75 U.N.T.S. 135, *reprinted in* THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 507, 513 (Dietrich Schindler and Jiri Toman eds., 4th ed. 2004).
4. See YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 140–147 (3d ed. 2001).
5. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 711, 730.
6. *Id.* at 733.
7. Jean de Preux, *Article 44*, in COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 519, 537 (Yves Sandoz et al. eds., 1987).
8. The wearing of civilian clothes lies at the core of the problem. Some suicide attacks (epitomized by Japanese *kamikaze* pilots in World War II, flying properly marked warplanes) come within the ambit of lawful combatancy.
9. See Article 33 (first Paragraph) of Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 575, 590.
10. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 485, 496.
11. The official ICRC Commentary refers to “individual portable weapons, such as side-arms, revolvers or even rifles.” COMMENTARY, II GENEVA CONVENTION 194 (Jean Pictet et al. eds., 1960).
12. Protocol I, *supra* note 5, at 730.
13. See Law of War Workshop 7-30–7-31 (US Army, Judge Advocate General, 1999).
14. Protocol I, *supra* note 5, at 736.
15. Geneva Convention (IV), *supra* note 9, at 589.
16. See JUDITH G. GARDAM, NON-COMBATANT IMMUNITY AS A NORM OF INTERNATIONAL HUMANITARIAN LAW 153 (1993).
17. Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9* (1998), *reprinted in* 37 INTERNATIONAL LEGAL MATERIALS 999, 1008 (1998).
18. See William J. Fenrick, *Article 8(2)(b)(xxiii)*, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 253, *id.* (O. Triffterer ed., 1999).
19. See Christopher D. Booth, *Prosecuting the ‘Fog of War?’: Examining the Legal Implications of an Alleged Massacre of South Korean Civilians by U.S. Forces during the Opening Days of the Korean War in the Village of No Gun Ri*, 33 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 933, 972 n.301 (2000).
20. Protocol I, *supra* note 5, at 736.
21. See Louise Doswald-Beck, *The Civilian in the Crossfire*, 24 JOURNAL OF PEACE RESEARCH 251, 257 (1987).
22. See W. Hays Parks, *Air War and the Law of War*, 32 AIR FORCE LAW REVIEW 1, 162–163 (1990).

23. See Andrew D. McClintock, *The Law of War: Coalition Attacks on Iraqi Chemical and Biological Weapon Storage and Production Facilities*, 7 EMORY INTERNATIONAL LAW REVIEW 633, 663–664 (1993).
24. For a full treatment of the subject of military objectives, see Yoram Dinstein, *Legitimate Military Objectives under the Current Jus in Bello*, 31 ISRAEL YEARBOOK ON HUMAN RIGHTS 1 (2001).
25. Protocol I, *supra* note 5, at 737.
26. See Waldemar A. Solf, *Article 52, in NEW RULES FOR VICTIMS OF ARMED CONFLICTS: COMMENTARY ON THE TWO 1977 PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949*, at 318, 327 (Michael Bothe, Karl J. Partsch and Waldemar A. Solf eds., 1982).
27. Protocol I, *supra* note 5, at 737.
28. *Id.* at 721.
29. Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, [1996] ICJ Rep. 226, 587.
30. Protocol I, *supra* note 5, at 736.
31. Cf. Parks, *supra* note 22, at 168.
32. Cf. W. Michael Reisman, *The Lessons of Qana*, 22 YALE JOURNAL OF INTERNATIONAL LAW 381, 395–396 (1997).
33. See Dinstein, *supra* note 24, at 4.
34. See Michael N. Schmitt, *State-Sponsored Assassination in International and Domestic Law*, 17 YALE JOURNAL OF INTERNATIONAL LAW 609, 674 (1992).
35. Burrus M. Carnahan, *Correspondent's Report*, 2 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 423, 424 (1999).
36. Hague Regulations Respecting the Laws and Customs of War on Land, Annexed to Hague Convention (II) of 1899 and Hague Convention (IV) of 1907, THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 66, 74.
37. *Id.* at 78.
38. Cf. Armin A. Steinkamm, *Pillage*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1029, *id.* (Rudolf Bernhardt ed., 1997).
39. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 999, 1002.
40. Protocol I, *supra* note 5, at 752.
41. See Hans-Peter Gasser, *Article 79, in COMMENTARY ON THE ADDITIONAL PROTOCOLS*, *supra* note 7, at 473, 476.
42. See Hans-Peter Gasser, *Protection of the Civilian Population, in THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS* 209, 228 (Dieter Fleck ed., 1995).
43. Geneva Convention (III), *supra* note 3, at 517.
44. *Id.* at 557.
45. *Id.* at 517.
46. Hague Regulations, *supra* note 36, at 77–81.
47. Geneva Convention (IV), *supra* note 9, *passim*.
48. See GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 276–86 (1957).
49. Geneva Convention (IV), *supra* note 9, at 580.
50. S.C. Res. 1472, U.N. SCOR, 58th Sess., 4732d mtg., U.N. Doc. S/RES/1472 (2003), *reprinted in* 42 INTERNATIONAL LEGAL MATERIALS 767, *id.* (2003).
51. S.C. Res. 1483, U.N. SCOR, 58th Sess., 4761st mtg., U.N. Doc. S/RES/1483 (2003), *reprinted in* 42 INTERNATIONAL LEGAL MATERIALS 1016, 1017 (2003).
52. Hague Regulations, *supra* note 36, at 78.

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53. See Yoram Dinstein, *The Israel Supreme Court and the Law of Belligerent Occupation: Article 43 of the Hague Regulations*, 25 ISRAEL YEARBOOK ON HUMAN RIGHTS 1 (1995).
54. See E. H. FEILCHENFELD, *THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION* 89 (1942).
55. See G. T. Watts, *The British Military Occupation of Cyrenaica, 1942–1949*, 37 *TRANSACTIONS OF THE GROTIUS SOCIETY* 69, 72–73 (1951).
56. Hague Regulations, *supra* note 36, at 80.
57. See Yoram Dinstein, *Booty in Land Warfare*, 1 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 432, *id.* (Rudolf Bernhardt ed., 1992).
58. Hague Regulations, *supra* note 36, at 80–81.
59. See Monroe Leigh, *Department of State Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez*, 16 *INTERNATIONAL LEGAL MATERIALS* 733 (1977).
60. Geneva Convention (IV), *supra* note 9, at 582.